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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 161

SOUTH CAROLINA STATE HIGHWAY DEPARTMENT, SOUTH CAROLINA PUBLIC SERVICE COMMISSION, ET AL., APPELLANTS

v.

BARNWELL BROTHERS, INC., POOLE TRANSPORTATION, INC., HORTON MOTOR LINES, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

BRIEF ON BEHALF OF THE UNITED STATES AS AMICUS CURIAE

OPINION BELOW

The opinion of the District Court for the Eastern District of South Carolina (R. 55) is reported in 17 F. Supp. 803.

JURISDICTION

The opinion and decree of the District Court were filed January 20, 1937 (R. 55–85). The jurisdictional statement was filed by the appellants on

June 1, 1937, as required by Rule 12 of this Court, and probable jurisdiction was noted on October 11, 1937, under the provisions of Section 266 of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The Government will confine its argument to the single question whether the laws of the State of South Carolina limiting the weight and width of motor trucks operating in interstate commerce on highways of standard paving is an unreasonable burden on interstate commerce in view of the declared policy and objectives of the Federal Highway Aid Acts and related national legislation.

STATUTES INVOLVED

Sections 2, 4, and 6 of the South Carolina Highway Act (No. 259, Acts of S. C., 1933, p. 340, April 28, 1933) contain the provisions which are the subject of this suit and are set forth in Appendix I of the appellants' brief (pp. 146–148). The Federal Aid Road Act of July 11, 1916 (c. 241, 39 Stat. 355), and the Federal Highway Act of November 9, 1921 (c. 119, 42 Stat. 212), are set forth in the Appendix, *infra*, pp. 30–54.

STATEMENT

This case is an appeal from the final decree of the District Court of the United States for the Eastern District of South Carolina, permanently

enjoining the enforcement of the provisions of a statute of South Carolina which limit the weight and width of motor trucks using its highways in interstate commerce on the ground that such regulations constitute an unreasonable burden on interstate commerce (R. 85). The injunction is restricted to the operations of the plaintiffs below while they are engaging in interstate commerce on certain designated federal aid highways as may be of standard concrete or concrete and asphalt construction (R. 85). The United States submits this brief *amicus curiae* because the question of the constitutional validity of the South Carolina statute affects the success of the Federal Highway Aid program and has direct bearing on an investment of approximately $29,000,000 which the United States has made in the allocation of funds to the State of South Carolina for the construction of an interstate system of highways (R. 252).

For a statement of the essential facts the Court is respectfully referred to the statement contained in the appellants' brief (pp. 3–11).

SUMMARY OF ARGUMENT

The court below properly held that the state regulations limiting the width and weight of motor vehicles are an unreasonable burden on interstate commerce insofar as they apply to traffic on the interstate system of Federal Aid Highways. The objectives of the Federal Aid Highway program are

of significance in determining the reasonableness of the state regulations as against the charge that they unduly burden interstate commerce. The same is true of the obectives of the Federal Motor Carrier Act. Since, as the court below found, 85 per cent of the standard equipment used by motor carriers in interstate commerce exceeds the limitations fixed by South Carolina, and since such equipment conforms to the standards approved by the Federal Bureau of Roads pursuant to the Federal Highway Act of 1921, the interference with interstate commerce is evident. The supposed justification for the South Carolina regulations as a means of preserving the highways and promoting safety cannot be sustained, in view of the evidence and findings to the effect that the gross weight limit established by the State is unreasonable and unrelated to those ends; and that the appropriate basis of regulation is found in limitations on wheel and axle load, as recommended by public highway agencies and generally adopted by States and interstate carriers.

ARGUMENT

THE SOUTH CAROLINA REGULATIONS RESTRICTING THE WEIGHT AND WIDTH OF MOTOR TRUCKS ARE AN UNREASONABLE BURDEN ON INTERSTATE COMMERCE INSOFAR AS THEY AFFECT THE INTERSTATE SYSTEM OF FEDERAL AID HIGHWAYS

Introductory

Section 4 of the South Carolina statute provides that "No person shall operate on any highway any

motor truck or semi-trailer truck whose gross weight, including load, shall exceed 20,000 pounds." Section 6 similarly restricts the use of the highways to trucks or semi-trailer trucks "whose total outside width, including any part of body or load," exceeds 90 inches. Section 2 defines the term "Semi-Trailer Motor Trucks" as "any motor-propelled truck, not operated or driven on fixed rails or tracks, designed to draw, and to support the front end of a semi-trailer," but that "The tractor (or motor propelled truck), together with the semi-trailer shall be considered one unit * * *."

The appellants contend that these highway use restrictions are imposed for the purpose of lowering the cost of highway construction and maintenance and of insuring the safety and protecting the lives of the traveling public, and that they are a valid exercise of the police power of the State (R. 161–162, 179, 187–188, 256–257, 240).

During the trial appellees introduced considerable evidence demonstrating that there is no substantial relationship between gross load weight standards and the conservation of the highways (R. 125, 126–127, 129–130, 133, 135), or the safety of the public using them (R. 121–122, 155). The court below found that "gross weight of vehicles is not a factor to be considered in the preservation of concrete highways * * * and that "a gross weight limitation of 20,000 pounds is unreasonable as a means of preserving the highway" (R. 83;

Finding of Fact No. 22). The court below also found that "the gross load limitation has no reasonable relationship to the safety of the public using the highways" (R. 83, Finding of Fact No. 23).

Likewise, testimony was presented by the appellees to demonstrate that the 90-inch width restriction was not reasonably necessary to insure the safety or protect the lives of the traveling public (R. 236, 275-282). On the basis of this evidence, the court below found that "the width limitation of 90 inches is unreasonable when applied to the standard concrete highways of the state and the arteries of interstate commerce heretofore mentioned, in view of the fact that all other states in the Union permit a width of 96 inches, this is the standard width of trucks engaged in interstate commerce, and the enforcement of the 90 inch limitation would exclude from the highways a large portion of the equipment now used in interstate commerce without material advantage to the safety or preservation of the highways" (R. 83, Finding of Fact No. 24).

The opinion of the court below, delivered by Judge Parker, is comprehensive and painstaking. In considering the reasonableness of the South Carolina highway restrictions emphasis was placed on the existence of the Federal Highway Aid program (R. 67–68). On that point, the court said (17 F. Supp. at 811):

> It must be remembered in this connection that this splendid system of highways was

> constructed to bear the traffic developed by modern conditions; and, because it was realized that such a system would furnish highways for interstate commerce which would facilitate the growth and development of the nation, the Federal Government has supplied to the state of South Carolina funds for their construction amounting to $29,000,000, which has been used for that purpose. While the fact that the federal government has aided in the construction of the highways does not, of course, detract from the power of the state to regulate and control them (*Morris* v. *Duby*, 274 U. S. 135, 143, 47 S. Ct. 548, 549, 71 L. Ed. 966), it is, we think, a circumstance which should be considered in passing upon the reasonableness of a state statute the effect of which would be to drive an important part of interstate commerce from the highways and withdraw them to that extent from the use for which they were intended and for which the federal aid was was granted.

It is in connection with the Federal Highway Aid program and the possible effect of the South Carolina legislation upon the effectuation of its policies that the Government desires to present its views to this Court.

It should be noted that the decree of the court below is limited in its application to "highways of the State of South Carolina numbered 1, 15–A, 17, 21, 25, 29, and 52, or on such portions of other Federal Aid highways as may be of standard concrete

or concrete and asphalt construction" (R. 85). To this extent the issue involved in this case is limited to the reasonableness of state highway restrictions in their application to highways which have been partially constructed through Federal grants-in-aid to the State of South Carolina. But in a larger sense the success of the entire Federal Highway Aid program may depend upon the constitutional validity of state highway use restrictions similar to those involved in this case which place a substantial burden upon the utilization of these Federal Aid Highways for interstate transportation by motor truck (R. 84, Finding of Fact No. 26).

A. *The Significance of the Federal Highway Acts*

On several occasions this Court has recognized the propriety of considering the purposes and objectives of the Federal Highway Aid program in passing upon the reasonableness of local regulations pertaining to the use of interstate highways which are a part of the national system. In *Bush Co.* v. *Maloy,* 267 U. S. 317, this Court said (at p. 324):

> The federal-aid legislation is of significance, not because of the aid given by the United States for the construction of particular highways, but because those acts make clear the purpose of Congress that state highways shall be open to interstate commerce.

Again, in *Morris* v. *Duby*, 274 U. S. 135, this Court said that, although regulation as to the method of use of highways remained in the States, such regulation could not be "so arbitrary and unreasonable as to defeat the useful purposes for which Congress has made its large contribution to bettering the highway systems of the Union * * *" 274 U. S. at p. 145). And in *Buck* v. *Kuykendall*, 267 U. S. 307, this Court held that a statute of the State of Washington which sought to regulate the use of its highways by requiring interstate motor carriers to obtain certificates of convenience and necessity before they were permitted to use the highways was an unreasonable burden on interstate commerce because the Act had no relation "to safety or to conservation of the highways" (p. 315) and "defeats the purpose of Congress expressed in the legislation giving federal aid for the construction of interstate highways" (p. 316). Recently, this Court took occasion to consider in detail the basic purposes and policy of the Federal Highway Aid program in connection with a case which involved the validity of a statute of the State of Tennessee requiring railroads to pay one-half of the expense involved in eliminating grade crossings. *Nashville, C. & St. L. Ry.* v. *Walters*, 294 U. S. 405. That decision not only recognized the propriety of considering the Federal Highway Aid program in connection with the reasonableness of local highway regulations but gave definite legal

significance to the functional character of the highways comprising the national interstate system constructed under these Federal Acts (294 U. S. at 417 *et seq.*). It is submitted that these decisions clearly establish that in determining the constitutionality of state highway use restrictions which indirectly affect interstate motor transportation over federal aid highways the declared policy and purposes of the Federal Highway Aid Acts must be considered.

B. *The Federal Highway Aid Program—a Cooperative Enterprise*

The early history of the attempts of the Federal Government to deal with problems of highway improvement and transportation have been so fully presented by the appellees in their brief (pp. 10–22) that the Government sees no reason for duplicating that account. It is enough to point out that since 1806 the Federal Government has actively participated in the development and improvement of interstate highways throughout the nation.

The Federal Aid Road Act of July 11, 1916 (c. 241, 39 Stat. 355), was the outgrowth of a series of investigations by the Federal Government in the highway field and was due in a large measure to public agitation for Government funds for highway development. (Report of the Select Committee to Investigate the Executive Agencies of the Government, No. 12, pursuant to Senate Resolution

No. 217, 74th Cong., 2d Sess., 1937.) This legislation marked the beginning of an intensive effort on the part of the Federal Government to cooperate with the States in the development of a national system of interstate highways. The Act appropriated $75,000,000 to be allotted over a five-year period by the Secretary of Agriculture to the various States. These funds could be applied in the discretion of the Secretary to any roads "over which the United States mails now are or may hereafter be transported." The Act also established an arithmetical formula for an allocation among the various States of the total funds available and conditioned the eligibility of States for grants-in-aid upon the existence of State Highway Departments. The legislation also enabled the Federal Government to protect its investment in these federal-aid roads by withdrawing further grants from States which failed to maintain these roads according to specified standards, and it empowered the Secretary of Agriculture to make all necessary rules and regulations for carrying out the provisions of the law. The statute set up a "matching system" by requiring the State to bear at least one-half the cost of each federal-aid project approved by the Secretary. A provision was included in the Act that no money apportioned under the law to any State could be expended therein until the local legislature had consented to the provisions of the Road Act. By the beginning of the fiscal year 1918 every State in the Union, including

South Carolina, had given adequate assent to the terms of the Act. (Report of the Director of the Office of Public Roads and Rural Engineering, p. 1, 1917.) Although the Road Act of 1916 placed ample authority in the hands of the Federal Government to determine the vital elements in highway development—the location of projects, physical specifications as to type of surfacing, width, strength, elevation, etc., and priority of projects—it was soon apparent that there were important defects in this Act which tended to impede the development of a uniform national system of interstate highways. In 1919 the Chief of the Bureau of Public Roads pointed out that the post road requirements of the 1916 Act seriously handicapped the state use of Federal funds. (Report of the Chief of the Bureau of Public Roads, 1919.) The Post Office Appropriation Act of February 28, 1919, c. 69, 40 Stat. 1200, broadened the definition of rural post roads so as to include highways over which main traffic might be handled.

In order to cure many of the other obvious defects in the Act of 1916, Congress in 1921 passed the Federal Highway Act (c. 119, 42 Stat. 212) to give direction to future Federal cooperation with the States in the construction and maintenance of a national system of interstate highways. Section 6 of this Act provided that in approving projects to receive federal-aid preference should be given "to such projects as will expedite the completion of

an adequate and connected system of highways, interstate in character." This section also specified that the Secretary of Agriculture in cooperation with each State Highway Department should designate a system of highways not exceeding 7 per cent of the total mileage in each State and that the application of Federal funds was to be limited to this designated system. State highway departments were given authority initially to select the mileage to constitute this 7 per cent system, but final approval of the designated system was placed in the hands of the Secretary of Agriculture (Section 6). By these provisions it was made more certain that Federal moneys expended in the future would not be dissipated over the state systems without regard to the needs of an interstate system of highways. Furthermore, Section 8 of the Act provided "That only such durable types of surface and kinds of materials shall be adopted for the construction and reconstruction of any highway which is a part of the primary or interstate and secondary or intercounty systems as will adequately meet the existing and probable future traffic needs and conditions thereon." To insure the effective administration of this section, the Secretary of Agriculture was authorized to approve the types and width of construction and reconstruction and the character of improvement, repair, and maintenance in each case where a request was made for allocation of Federal funds.

The foregoing legislation constitutes the basic statutory provisions under which the Federal Highway Aid policy has been administered from 1916 to the present time. Above all else it indicates that the Federal Government has entered into a cooperative undertaking with the States for the development of a national interconnected and interstate highway system which would be doubly valuable because it would be integrated with the various state systems and local "feeder" and secondary highways. Between 1916 and 1936 the Federal Government had paid to the various States the sum of $2,197,634,970.13; and approximately $500,000,000 has been apportioned, but not yet paid out, for the development of selected federal-aid system (R. 137, 252). More than half of this total sum has been paid to the States during the decade 1926 to 1936. During the entire period of Federal aid the State of South Carolina has been allotted $29,741,137.63 by the Federal Government for the construction of such highways, but more than 70 per cent of this sum was paid during the decade between 1926–1936 (R. 252). As a result of this tremendous national investment and the combined efforts of the state and Federal governments there now exists a national system of improved highways which, from a standpoint of physical characteristics, permits the relatively unimpeded movement of interstate transportation from border to border. (Report of Selected Committee to Investigate

Executive Agencies of the Government, p. 12, No. 12, pursuant to Senate Resolution No. 217, 74th Cong., 2d Sess., 1937.)

In the exercise of the powers which were conferred upon the Secretary of Agriculture by Section 8 of the Act of 1921 "approve the types and width of construction and reconstruction and the character of improvement, repair, and maintenance" of the highways in what is known as the 7 per cent system, the Bureau of Public Roads has obtained substantial uniformity in design and capacity for the main interstate highways traversing the country. The standard of weight capacity for these federal-aid highways approved by the Bureau is 16,000 pounds per axle for high pressure and 18,000 pounds per axle for low pressure pneumatic tires (or 8,000 and 9,000 pounds per wheel), and it was for these capacities that the Bureau authorized and approved the construction of the main highways, including those of South Carolina, in the interconnected interstate system. (Testimony of Thomas McDonald, Chief of the United States Bureau of Public Roads before the Interstate Commerce Commission, Docket No. 23400.)

In 1934 the Bureau of Public Roads, under authority of the Federal Highway Act of 1921, published a "Uniform Act Regulating Traffic on Highways," as revised and approved by the Fourth National Conference on Street and Highway Safety, which was recommended for adoption by all the

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States (R. 275). By Section 145 of this Uniform Act (R. 277) wheel loads not in excess of 8,000 and 9,000 pounds and axle loads not in excess of 16,000 and 18,000 pounds are recommended, depending upon whether high pressure or low pressure pneumatic tires are used. As will be seen from the Table of States printed in the appellees' brief (p. 79) all but a few of the States have regulatory provisions in substantial conformity to the Uniform Act approved by the Bureau of Public Roads.

C. *Interstate Motor Transportation over Federal Aid Highways in the South Atlantic Region*

In the development of the national interstate highway system and the growth of commercial highway transportation over this system, the South Atlantic region of the United States has played a prominent role. The court below indicated that there was abundant evidence to sustain the conclusion that within the past decade there has been a great development in interstate commerce by truck and a corresponding change and development of industry in the Southeastern part of the United States which was largely contributed to by the advent of truck transportation (17 F. Supp. 803, at 810). The produce industry, the textile industry, the fertilizer industry, the lumber industry and many other industries have changed in large measure their methods of doing business as a result of the facilities afforded them by the use of trucks in

interstate commerce (R. 100–117; 142–158). The evidence further demonstrates that the State of South Carolina has the best system of highways in the Southeastern part of the United States (R. 180–184) and as good as any in the country (R. 180). There are within the State itself 60,000 miles of roads of all kinds of which 6,100 miles are embraced in a state highway system. Of this last number 2,417 miles are of standard pavement, and the arteries of interstate commerce are of this character with the exception of a few short lengths (R. 159). The state highway system in South Carolina has cost approximately $111,000,000 (R. 173–174), of which $29,741,137.63 was received from the Federal Government (R. 137). No one road in the State is in its entirety a Federal Aid project; that is, portions of the road were built with Federal aid, while other portions were built entirely with state funds (R. 191–192). The total mileage of completed Federal Aid projects within the State of South Carolina is approximately 2,797.8 miles, of which 795.8 miles are of concrete and 193.5 miles are of bituminous concrete (R. 253, Exhibit 4). However, the evidence introduced by the appellees indicates that there are 4,322 miles of road in South Carolina embraced within the approved Federal Highway Aid system (R. 271–272, Exhibit 11). The standard paving used in the construction of the South Carolina highway system is not materially different from the modern paving used in

most of the other States of the Union (R. 160, 161). For the most part it varies from 18 to 20 feet in width, 7½ or 8 inches in thickness at the edges and 6 or 6½ inches in thickness at the center (R. 81, 126).

According to the estimates made by engineers testifying for the appellees these roads are capable of sustaining without injury a wheel load of 8,000 or 8,500 pounds and an axle load of from 16,000 to 18,000 pounds (R. 125, 126–127). These estimates are in accord with the approved standards established by the Bureau of Public Roads pursuant to its authority under the Federal Highway Act of 1921 (R. 275). Furthermore, the American Association of State Highway Officials, composed of the enforcement and administrative officials of all the State Highway Departments, has indicated that the gross weight load standard adopted by the South Carolina statute is not a factor to be considered in the enactment of legislation to conserve and protect the highways of the State (R. 279). This association of qualified experts has emphatically stated that "Highway stresses are ruled by *wheel loads* and not by *gross loads*" and "so far as road surfaces are concerned, the limitation of axle or wheel loads gives full protection, let gross loads be what they may" (R. 70).

D. *The Burdens Imposed by the South Carolina Highway Act*

The evidence in the record and the findings of the court below clearly demonstrate the burdens which

the enforcement of the South Carolina regulations will impose upon motor transportation through that State. Rather than attempt to summarize the evidence introduced by appellees the Government will merely set forth the findings made by the court below to which the appellants took no exception in their assignments of error. The pertinent findings of fact are as follows:

> 7. That the interstate motor transportation industry has grown and developed in the past five years to be an established industry. That standard equipment operated by motor carriers in interstate commerce consists of trucks and tractor semi-trailers, and that 85 per cent to 90 per cent of this equipment is 96 inches in width and weighs more than 20,000 pounds gross; that enforcement of the South Carolina law would result in the obstruction of the flow of interstate commerce into, out of, and across the State of South Carolina because it would necessitate the transferring of commodities to and from trucks of the size and weight prescribed by said law, with a consequent increase in the cost of interstate transportation and a discrimination against South Carolina shippers and others shipping into and across South Carolina, and would render it practically impossible for a large part of interstate commerce now conducted by truck to use the roads of that state (R. 78).
>
> 8. That weight and size of motor trucks are important factors in the fixing of inter-

state rates and that enforcement of the South Carolina law under consideration would necessitate increase of rates for transportation of commodities into, out of, and across South Carolina, would prevent the interchange of motor truck equipment and the establishment of through routes and joint rates on shipments moving into, out of, and across South Carolina (R. 78).

9. That the development of motor truck transportation has been of great benefit to the textile industry because it has permitted manufacturers to supply customers with commodities in smaller quantities at more frequent intervals, without increased cost, and the customers' demand for this service necessitates the use of motor trucks. That the standard motor trucks supplying this service are 96 inches in width and when properly loaded weigh more than 20,000 pounds gross. That enforcement of the South Carolina law would cause delay in transit and increase the cost of intersate transportation of textiles into, out of, and across the State of South Carolina and would result in discrimination against South Carolina textile mills in favor of competitors in other states (R. 78).

10. That the continued operation and development of large-scale truck farming and the shipping of vegetables out of South Carolina in interstate commerce is dependent upon the peculiar service rendered by motor trucks in the transportation of produce from

roadside farms to large and distant markets quickly and economically. That truck farmers and vegetable growers depend, for interstate transportation of their produce, on motor trucks operated not by the farmers themselves but by transportation companies whose trucks move about the country with the seasons. That these trucks, and particularly the refrigerator trucks upon which the farmers depend for shipment of perishables, exceed the size and weight limitations prescribed by the law of South Carolina. That enforcement of the said law would discriminate against South Carolina truck farmers and vegetable growers in favor of their competitors in other states and would injure if not destroy this industry in South Carolina (R. 79).

11. That a large amount of fertilizer is shipped out of South Carolina in interstate commerce by motor truck and delivered to farmers at the field for immediate use; that this service cannot be rendered by other transportation agencies; that the product has a low value in proportion to weight, and enforcement of the South Carolina law would increase the cost of fertilizer to consumers and jeopardize the fertilizer industry in South Carolina (R. 79).

12. That interstate movement of household furniture and effects by motor truck has developed with the advent of good roads; that railroads do not offer adequate service and do not compete with trucks in this business; that because of the weight and bulk of

furniture it is necessary that loads exceed the size and weight limitations prescribed by the law of South Carolina; that enforcement of the South Carolina law would increase the cost and curtail the efficiency of this service to the public (R. 79).

13. That the business of shipping lumber in interstate commerce from mills in South Carolina has developed with the advent of good roads and motor trucks; that motor transportation enables the mills of South Carolina to meet the demand of customers for delivery of lumber at the point of use; that if the South Carolina law is enforced the interstate movement of this commodity by truck will practically cease and South Carolina lumber mills will be forced to ship by rail at increased cost of transportation and serious curtailment of service both in time and convenience to the consuming public (R. 79).

14. That with the advent of good roads and motor truck transportation the furniture manufacturers have changed their method of doing business and have commenced shipping large quantities of furniture in interstate commerce by motor truck; that this method of transportation is now important because customers demand quick shipments in small lots and this service connot be supplied by railroads; that the transportation of this commodity necessitates the use of trucks 96 inches in width and weighing more than 20,000 pounds gross; that en-

forcement of the South Carolina law under consideration would interfere with the traffic and would result in discrimination against manufacturers shipping furniture out of and across South Carolina in favor of their competitors (R. 80).

15. That the port of Charleston, S. C., handles a large volume of inbound and outbound traffic moving in interstate and foreign commerce; that in recent years the percentage of this interstate and foreign traffic moving to and from the port of Charleston in motor trucks has steadily increased, and at the present time the records of three of the important inter-coastal steamship lines operating in and out of Charleston reflect, respectively, 24 per cent, 58 per cent, and 40 per cent of all tonnage moving by truck; that shippers and consignees rely upon and demand the service now offered by motor trucks because of advantageous rates and because motor trucks offer transportation facilities which cannot be duplicated by other transportation agencies; that motor trucks now operating in and out of Charleston and carrying cargoes in interstate commerce to and from the port are of the standard type, 96 inches in width and weighing more than 20,000 pounds gross; that many of the commodities moving in interstate commerce by motor truck to and from the port of Charleston cannot be profitably transported in trucks within the weight and

size limitations prescribed by the law of South Carolina; that enforcement of the South Carolina law would result in the diversion of large cargoes, normally consigned to the port of Charleston, to other competing ports in other states along the Atlantic seaboard (R. 80).

16. That flour is one of the major commodities moving into the port of Charleston and that a large part of it is transported in interstate commerce by motor truck; that truck transportation of this commodity is necessary because speed of delivery is essential to prevent deterioration and meet the demand of customers and also because numerous small communities are dependent on shipments in smaller quantities than can be profitably shipped by rail; that the average pay load of a motor vehicle hauling flour is 20,000 pounds, making a gross load of about 30,000 pounds; that enforcement of the law under consideration will increase the cost of transportation (R. 81).

E. *The Significance of the Motor Carrier Act*

The discussion above concerning the significance of the Federal Aid Acts and their administration, in relation to the principle forbidding unreasonable burdens on interstate commerce, is likewise applicable to Part II of the Interstate Commerce Act (Motor Carrier Act, 1935). The District Court found that the enforcement of the South Carolina regulations will defeat the purposes and policies

of Congress as expressed in this Act. The Government makes no contention here that the Federal legislation regulating motor carriers supersedes the State's power to regulate the size and weight of motor vehicles in interstate commerce, and it is apparent from the opinion of the court below that it gave no such significance to this legislation (R. 174). Concerning this aspect of the case the court below said (17 F. Supp. at pp. 814–815):

> There is another angle from which the reasonableness of police regulations burdening interstate commerce in this way must be judged. Not only has Congress aided in the construction of the roads so that they may become highways of such commerce, but in the enactment of the motor carriers' act, it has recognized truck traffic as a legitimate part of that commerce essential to the welfare of the public and subject to regulation for that reason. As said of Federal aid legislation in *Bush & Sons Co.* v. *Maloy*, 267 U. S. 317, 324, 45 S. Ct. 326, 327, 69 L. Ed. 627, this legislation regulating motor carriers is of significance because it makes clear the purpose of Congress that state highways shall be open to commerce of that character. Congress has not attempted to regulate size and weight and there are great practical difficulties in the way of such regulation by Congress. It is of great importance, therefore, that regulation of this matter by the states be held

within reasonable bounds, and that they be not permitted, under guise of exercising the police power, to exclude from their highways by unreasonable regulations the interstate commerce which Congress is regulating in the public interest and for the carrying of which it has aided in the construction of roads that form parts of a great national system of highways.

The importance of the Motor Carrier Act and its administration as a factor in determining the reasonableness of state highway regulation affecting motor carriers is demonstrated by recent decisions of the Interstate Commerce Commission applying the Act to specific situations. (*Edwin A. Bowles Common Carrier Application,* 1 M. C. C. 589, March 13, 1937; *Pennsylvania Truck Lines, Inc., Acquisition of Control, Etc.,* 1 M. C. C. 101, October 8, 1936.) In the light of the declared purposes of Congress in that Act "to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest", to "promote adequate, economical, and efficient service by motor carriers," and to "develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense" (Section 202 (a)), the Government contends that this legislation, also, supports the application of

the commerce clause against state legislation which needlessly subverts and defeats the declared purposes and policies of Congress. It is recognized that, if the needs of the State are such as to demand the regulations which it seeks to enforce, then the defeat of the purposes and policies of Congress is unavoidable under our constitutional system. But it must equally be true that where the regulations are not in fact demanded by the reasonable necessities of the State, and other regulations or methods of limitation would satisfy its reasonable necessities, the State may not arbitrarily ignore the demands of interstate commerce and arbitrarily defeat the purposes and policies of Congress.

F. *Previous Decisions of this Court*

There have been at least two decisions of this Court involving the validity of state regulation of sizes and weight of motor vehicles. These cases are *Morris* v. *Duby*, 274 U. S. 135, and *Sproles* v. *Binford*, 286 U. S. 374. In both of these cases the Court upheld the reasonableness of the state highway restrictions.

The Government is of the opinion that the decisions in those cases are not controlling when applied to the evidence and findings presented by the instant case. In *Morris* v. *Duby, supra*, the effect of the state regulation was considered only in its application to an isolated stretch of highway approximately 22 miles long. The instant case in-

volves a broader issue, since it concerns the utilization of the Federal Aid Highways crossing the State of South Carolina which are an integral part of the channels of interstate commerce for the entire Southeastern section of the United States. In *Sproles* v. *Binford, supra,* the issue as to the burden on interstate commerce was neither substantially alleged nor considered by the lower court. But more important, in neither of these cases was there any attempt made to introduce comprehensive testimony relative to the precise burden on interstate commerce which was imposed by the state highway restrictions. The same observation may be made with respect to the decisions of the Supreme Court of South Carolina in *State* v. *John P. Nutt Co.,* 180 S. C. 19, upholding the validity of the South Carolina Highway Act, which is now being attacked by the appellees. This Court denied a petition for certiorari in that case (297 U. S. 724), but, as in the other cases mentioned above, there had been no attempt in the lower courts to support the allegation of unreasonableness of the burden on interstate commerce by the introduction of evidence or testimony to sustain such a contention. None of these cases prevents this Court from examining the record in the instant case to determine the question of the burden on interstate commerce in the light of the evidence which has been introduced by the appellees to sustain their contention.

CONCLUSION

It is respectfully submitted that the decree of the District Court of the United States for the Eastern District of South Carolina should be affirmed.

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ROBERT H. JACKSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
ROBERT M. COOPER,
Special Attorney.

JANUARY 1938.

APPENDIX

The Federal Aid Road Act of July 11, 1916, c. 241, 39 Stat. 355–359, provides:

That the Secretary of Agriculture is authorized to cooperate with the States, through their respective State highway departments, in the construction of rural post roads; but no money apportioned under this Act to any State shall be expended therein until its legislature shall have assented to the provisions of this Act, except that, until the final adjournment of the first regular session of the legislature held after the passage of this Act, the assent of the governor of the State shall be sufficient. The Secretary of Agriculture and the State highway department of each State shall agree upon the roads to be constructed therein and the character and method of construction: *Provided,* That all roads constructed under the provisions of this Act shall be free from tolls of all kinds.

SEC. 2. That for the purpose of this Act the term "rural post road" shall be construed to mean any public road over which the United States mails now are or may hereafter be transported, excluding every street and road in a place having a population, as shown by the latest available Federal census, of two thousand five hundred or more, except that portion of any such street or road along which the houses average more than two hundred feet apart; the term "State highway department" shall be construed to include any department of another name, or commission, or official or officials,

of a State empowered, under its laws, to exercise the functions ordinarily exercised by a State highway department; the term "construction" shall be construed to include reconstruction and improvement of roads; "properly maintained" as used herein shall be construed to mean the making of needed repairs and the preservation of a reasonably smooth surface considering the type of the road; but shall not be held to include extraordinary repairs, nor reconstruction; necessary bridges and culverts shall be deemed parts of the respective roads covered by the provisions of this Act.

SEC. 3. That for the purpose of carrying out the provisions of this Act there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June thirtieth, nineteen hundred and seventeen, the sum of $5,000,000; for the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of $10,000,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of $15,000,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of $20,000,000; and for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, the sum of $25,000,000. So much of the appropriation apportioned to any State for any fiscal year as remains unexpended at the close thereof shall be available for expenditure in that State until the close of the succeeding fiscal year, except that amounts apportioned for any fiscal year to any State which has not a State highway department shall be available for expenditure in that State until the close of the third fiscal year succeeding the close of the fiscal year for which such appor-

tionment was made. Any amount apportioned under the provisions of this Act unexpended at the end of the period during which it is available for expenditure under the terms of this section shall be reapportioned, within sixty days thereafter, to all the States in the same manner and on the same basis, and certified to the Secretary of the Treasury and to the State highway departments and to the governors of States having no State highway departments in the same way as if it were being apportioned under this Act for the first time: *Provided,* That in States where the constitution prohibits the State from engaging in any work of internal improvements, then the amount of the appropriation under this Act apportioned to any such State shall be turned over to the highway department of the State or to the governor of said State to be expended under the provisions of this Act and under the rules and regulations of the Department of Agriculture, when any number of counties in any such State shall appropriate or provide the proportion or share needed to be raised in order to entitle such State to its part of the appropriation apportioned under this Act.

SEC. 4. That so much, not to exceed three per centum, of the appropriation for any fiscal year made by or under this Act as the Secretary of Agriculture may estimate to be necessary for administering the provisions of this Act shall be deducted for that purpose, available until expended. Within sixty days after the close of each fiscal year the Secretary of Agriculture shall determine what part, if any, of the sums theretofore deducted for administering the provisions of this Act will not be needed for that purpose

and apportion such part, if any, for the fiscal year then current in the same manner and on the same basis, and certify it to the Secretary of the Treasury and to the State highway departments, and to the governors of States having no State highway departments, in the same way as other amounts authorized by this Act to be apportioned among all the States for such current fiscal year. The Secretary of Agriculture, after making the deduction authorized by this section, shall apportion the remainder of the appropriation for each fiscal year among the several States in the following manner: One-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the population of each State bears to the total population of all the States, as shown by the latest available Federal census; one-third in the ratio which the mileage of rural delivery routes and star routes in each State bears to the total mileage of rural delivery routes and star routes in all the States, at the close of the next preceding fiscal year, as shown by the certificate of the Postmaster General, which he is directed to make and furnish annually to the Secretary of Agriculture.

SEC. 5. That within sixty days after the approval of this Act the Secretary of Agriculture shall certify to the Secretary of the Treasury and to each State highway department and to the governor of each State having no State highway department the sum which he has estimated to be deducted for administering the provisions of this Act and the sum which he has apportioned to each State for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and on or before January twentieth next preceding

the commencement of each succeeding fiscal year shall make like certificates for such fiscal year.

SEC. 6. That any State desiring to avail itself of the benefits of this Act shall, by its State highway department, submit to the Secretary of Agriculture project statements setting forth proposed construction of any rural post road or roads therein. If the Secretary of Agriculture approve a project, the State highway department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require: *Provided, however,* That the Secretary of Agriculture shall approve only such projects as may be substantial in character and the expenditure of funds hereby authorized shall be applied only to such improvements. Items included for engineering, inspection, and unforeseen contingencies shall not exceed ten per centum of the total estimated cost of the work. If the Secretary of Agriculture approve the plans, specifications, and estimates, he shall notify the State highway department and immediately certify the fact to the Secretary of the Treasury. The Secretary of the Treasury shall thereupon set aside the share of the United States payable under this Act on account of such project, which shall not exceed fifty per centum of the total estimated cost thereof. No payment of any money apportioned under this Act shall be made on any project until such statement of the project, and the plans, specifications, and estimates therefor, shall have been submitted to and approved by the Secretary of Agriculture.

When the Secretary of Agriculture shall find that any project so approved by him has been constructed in compliance with said

plans and specifications he shall cause to be paid to the proper authority of said State the amount set aside for said project: *Provided,* That the Secretary of Agriculture may, in his discretion, from time to time make payments on said construction as the same progresses, but these payments including previous payments, if any, shall not be more than the United States' pro rata part of the value of the labor and materials which have been actually put into said construction in conformity to said plans and specifications; nor shall any such payment be in excess of $10,000 per mile, exclusive of the cost of bridges of more than twenty feet clear span. The construction work and labor in each State shall be done in accordance with its laws, and under the direct supervision of the State highway department, subject to the inspection and approval of the Secretary of Agriculture and in accordance with the rules and regulations made pursuant to this Act.

The Secretary of Agriculture and the State highway department of each State may jointly determine at what times, and in what amounts, payments, as work progresses, shall be made under this Act. Such payments shall be made by the Secretary of the Treasury, on warrants drawn by the Secretary of Agriculture, to such officials, or officials, or depository, as may be designated by the State highway department and authorized under the laws of the State to receive public funds of the State or county.

SEC. 7. To maintain the roads constructed under the provisions of this Act shall be the duty of the States, or their civil subdivisions, according to the laws of the several States. If at any time the Secretary of Agriculture

shall find that any road in any State constructed under the provisions of this Act is not being properly maintained he shall give notice of such fact to the highway department of such State and if within four months from the receipt of said notice said road has not been put in a proper condition of maintenance then the Secretary of Agriculture shall thereafter refuse to approve any project for road construction in said State, or the civil subdivision thereof, as the fact may be, whose duty it is to maintain said road, until it has been put in a condition of proper maintenance.

SEC. 8. That there is hereby appropriated and made available until expended, out of any moneys in the National Treasury not otherwise appropriated, the sum of $1,000,000 for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and each fiscal year thereafter, up to and including the fiscal year ending June thirtieth, nineteen hundred and twenty-six, in all $10,000,000, to be available until expended under the supervision of the Secretary of Agriculture, upon request from the proper officers of the State, Territory, or county for the survey, construction, and maintenance of roads and trails within or only partly within the national forests, when necessary for the use and development of resources upon which communities within and adjacent to the national forests are dependent: *Provided,* That the State, Territory, or county shall enter into a cooperative agreement with the Secretary of Agriculture for the survey, construction, and maintenance of such roads or trails upon a basis equitable to both the State, Territory, or county, and the United States: *And provided also,* That

the aggregate expenditures in any State, Territory, or county shall not exceed ten per centum of the value, as determined by the Secretary of Agriculture, of the timber and forage resources which are or will be available for income upon the national forest lands within the respective county or counties wherein the roads or trails will be constructed; and the Secretary of Agriculture shall make annual report to Congress of the amounts expended hereunder.

That immediately upon the execution of any cooperative agreement hereunder the Secretary of Agriculture shall notify the Secretary of the Treasury of the amount to be expended by the United States within or adjacent to any national forest thereunder, and beginning with the next fiscal year and each fiscal year thereafter the Secretary of the Treasury shall apply from any and all revenues from such forest ten per centum thereof to reimburse the United States for expenditures made under such agreement until the whole amount advanced under such agreement shall have been returned from the receipts from such national forest.

SEC. 9. That out of the appropriations made by or under this Act, the Secretary of Agriculture is authorized to employ such assistants, clerks, and other persons in the city of Washington and elsewhere, to be taken from the eligible lists of the Civil Service Commission, to rent buildings outside of the city of Washington, to purchase such supplies, material, equipment, office fixtures, and apparatus, and to incur such travel and other expense as he may deem necessary for carrying out the purposes of this Act.

SEC. 10. That the Secretary of Agriculture is authorized to make rules and regulations for carrying out the provisions of this Act.

SEC. 11. That this Act shall be in force from the date of its passage.

Approved, July 11, 1916.

The Federal Highway Act of November 9, 1921, c. 119, 42 Stat. 212–219, provides:

That this Act may be cited as the Federal Highway Act.

SEC. 2. That, when used in this Act, unless the context indicates otherwise—

The term "Federal Aid Act" means the Act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916, as amended by sections 5 and 6 of an Act entitled "An Act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1920, and for other purposes," approved February 28, 1919, and all other Acts amendatory thereof or supplementary thereto.

The term "highway" includes rights of way, bridges, drainage structures, signs, guard rails, and protective structures in connection with highways, but shall not include any highway or street in a municipality having a population of two thousand five hundred or more as shown by the last available census, except that portion of any such highway or street along which within a distance of one mile the houses average more than two hundred feet apart.

The term "State highway department" includes any State department, commission, board, or official having adequate powers and suitably equipped and organized to discharge to the satisfaction of the Secretary of Agriculture the duties herein required.

The term "maintenance" means the constant making of needed repairs to preserve a smooth surfaced highway.

The term "construction" means the supervising, inspecting, actual building, and all expenses incidental to the construction of a highway, except locating, surveying, mapping, and costs of rights of way.

The term "reconstruction" means a widening or a rebuilding of the highway or any portion thereof to make it a continuous road, and of sufficient width and strength to care adequately for traffic needs.

The term "forest roads" means roads wholly or partly within or adjacent to and serving the national forests.

The term "State funds" includes for the purposes of this Act funds raised under the authority of the State, or any political or other subdivision thereof, and made available for expenditure under the direct control of the State highway department.

SEC. 3. All powers and duties of the Council of National Defense under the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June 30, 1917, and for other purposes," approved August 29, 1916, in relation to highway or highway transport, are hereby transferred to the Secretary of Agriculture, and the Council of National Defense is directed to turn over to the Secretary of Agriculture the equipment, material, supplies, papers, maps, and documents utilized in the exercise of such powers. The powers and duties of agencies dealing with highways in the national parks or in military or naval reservations under the control of the United States Army or Navy, or with highways used principally for military or naval

purposes, shall not be taken over by the Secretary of Agriculture, but such highways shall remain under the control and jurisdiction of such agencies.

The Secretary of Agriculture is authorized to cooperate with the State highway departments, and with the Department of the Interior in the construction of public highways within Indian reservations, and to pay the amount assumed therefor from the funds allotted or apportioned under this Act to the State wherein the reservation is located.

SEC. 4. That the Secretary of Agriculture shall establish an accounting division which shall devise and install a proper method of keeping the accounts.

SEC. 5. That the Secretary of War be, and he is hereby, authorized and directed to transfer to the Secretary of Agriculture, upon his request, all war material, equipment, and supplies now or hereafter declared surplus from stock now on hand and not needed for the purposes of the War Department but suitable for use in the improvement of highways, and that the same shall be distributed among the highway departments of the several States to be used in the construction, reconstruction, and maintenance of highways, such distribution to be upon the same basis as that hereinafter provided for in this Act in the distribution of Federal-aid fund: *Provided,* That the Secretary of Agriculture, in his discretion, may reserve from such distribution not to exceed 10 per centum of such material, equipment, and supplies for use in the construction, reconstruction, and maintenance of national forest roads or other roads constructed, reconstructed, or maintained under his direct supervision.

SEC. 6. That in approving projects to receive Federal aid under the provisions of this

Act the Secretary of Agriculture shall give preference to such projects as will expedite the completion of an adequate and connected system of highways, interstate in character.

Before any projects are approved in any State, such State, through its State highway department, shall select or designate a system of highways not to exceed 7 per centum of the total highway mileage of such State as shown by the records of the State highway department at the time of the passage of this Act.

Upon this system all Federal-aid apportionments shall be expended.

Highways which may receive Federal aid shall be divided into two classes, one of which shall be known as primary or interstate highways, and shall not exceed three-sevenths of the total mileage which may receive Federal aid, and the other which shall connect or correlate therewith and be known as secondary or intercounty highways, and shall consist of the remainder of the mileage which may receive Federal aid.

The Secretary of Agriculture shall have authority to approve in whole or in part the systems as designated or to require modifications or revisions thereof: *Provided,* That the States shall submit to the Secretary of Agriculture for his approval any proposed revisions of the designated systems of highways above provided for.

Not more than 60 per centum of all Federal aid allotted to any State shall be expended upon the primary or interstate highways until provision has been made for the improvement of the entire system of such highways: *Provided,* That with the approval of any State highway department the Secretary of Agricultural may approve the ex-

penditure of more than 60 per centum of the Federal aid apportioned to such State upon the primary or interstate highways in such State.

The Secretary of Agriculture may approve projects submitted by the State highway departments prior to the selection, designation, and approval of the system of Federal-aid highways herein provided for if he may reasonably anticipate that such projects will become a part of such system.

Whenever provision has been made by any State for the completion and maintenance of a system of primary or interstate and secondary or intercounty highways equal to 7 per centum of the total mileage of such State, as required by this Act, said State, through its State highway department, by and with the approval of the Secretary of Agriculture, is hereby authorized to add to the mileage of primary or interstate and secondary or intercounty systems as funds become available for the construction and maintenance of such additional mileage.

SEC. 7. That before any project shall be approved by the Secretary of Agriculture for any State such State shall make provisions for State funds required each year of such States by this Act for construction, reconstruction, and maintenance of all Federal-aid highways within the State, which funds shall be under the direct control of the State highway department.

SEC. 8. That only such durable types of surface and kinds of materials shall be adopted for the construction and reconstruction of any highway which is a part of the primary or interstate and secondary or intercounty systems as will adequately meet the existing and probable future traffic needs

and conditions thereon. The Secretary of Agriculture shall approve the types and width of construction and reconstruction and the character of improvement, repair, and maintenance in each case, consideration being given to the type and character which shall be best suited for each locality and to the probable character and extent of the future traffic.

SEC. 9. That all highways constructed or reconstructed under the provisions of this Act shall be free from tolls of all kinds.

That all highways in the primary or interstate system constructed after the passage of this Act shall have a right of way of ample width and a wearing surface of an adequate width which shall not be less than eighteen feet, unless, in the opinion of the Secretary of Agriculture, it is rendered impracticable by physical conditions, excessive costs, probable traffic requirements, or legal obstacles.

SEC. 10. That when any State shall have met the requirements of this Act, the Secretary of the Treasury, upon receipt of certification from the governor of such State to such effect, approved by the Secretary of Agriculture, shall immediately make available to such State, for the purpose set forth in this Act, the sum apportioned to such State as herein provided.

SEC. 11. That any State having complied with the provisions of this Act, and desiring to avail itself of the benefits thereof, shall by its State highway department submit to the Secretary of Agriculture project statements setting forth proposed construction or reconstruction of any primary or interstate, or secondary or intercounty highway therein. If the Secretary of Agriculture approve the project, the State highway department shall

furnish to him such surveys, plans, specifications, and estimates therefor as he may require; items included for engineering, inspection, and unforeseen contingencies shall not exceed 10 per centum of the total estimated cost of its construction.

That when the Secretary of Agriculture approves such surveys, plans, specifications, and estimates, he shall notify the State highway department and immediately certify the fact to the Secretary of the Treasury. The Secretary of the Treasury shall thereupon set aside the share of the United States payable under this Act on account of such projects, which shall not exceed 50 per centum of the total estimated cost thereof, except that in the case of any State containing unappropriated public lands exceeding 5 per centum of the total area of all lands in the State, the share of the United States payable under this Act on account of such projects shall not exceed 50 per centum of the total estimated cost thereof plus a percentage of such estimated cost equal to one-half of the percentage which the area of the unappropriated public lands in such State bears to the total area of such State: *Provided,* That the limitation of payments not to exceed $20,000 per mile, under existing law, which the Secretary of Agriculture may make be, and the same is hereby, increased in proportion to the increased percentage of Federal aid authorized by this section: *Provided further,* That these provisions relative to the public-land States shall apply to all unobligated or unmatched funds appropriated by the Federal Aid Act and payment for approved projects upon which actual building construction work had not begun on the 30th day of June, 1921.

SEC. 12. That the construction and reconstruction of the highways or parts of highways under the provisions of this Act, and all contracts, plans, specifications, and estimates relating thereto, shall be undertaken by the State highway departments subject to the approval of the Secretary of Agriculture. The construction and reconstruction work and labor in each State shall be done in accordance with its laws and under the direct supervision of the State highway department, subject to the inspection and approval of the Secretary of Agriculture and in accordance with the rules and regulations pursuant to this Act.

SEC. 13. That when the Secretary of Agriculture shall find that any project approved by him has been constructed or reconstructed in compliance with said plans and specifications, he shall cause to be paid to the proper authorities of said State the amount set aside for said project.

That the Secretary of Agriculture may, in his discretion, from time to time, make payments on such construction or reconstruction as the work progresses, but these payments, including previous payments, if any, shall not be more than the United States pro rata part of the value of the labor and materials which have been actually put into such construction or reconstruction in conformity to said plans and specifications. The Secretary of Agriculture and the State highway department of each State may jointly determine at what time and in what amounts payments as work progresses shall be made under this Act.

Such payments shall be made by the Secretary of the Treasury, on warrants drawn by the Secretary of Agriculture, to such offi-

cial or officials or depository as may be designated by the State highway department and authorized under the laws of the State to receive public funds of the State.

SEC. 14. That should any State fail to maintain any highway within its boundaries after construction or reconstruction under the provisions of this Act, the Secretary of Agriculture shall then serve notice upon the State highway department of that fact, and if within ninety days after receipt of such notice said highway has not been placed in proper condition of maintenance, the Secretary of Agriculture shall proceed immediately to have such highway placed in a proper condition of maintenance and charge the cost thereof against the Federal funds allotted to such State, and shall refuse to approve any other project in such State, except as hereinafter provided.

Upon the reimbursement by the State of the amount expended by the Federal Government for such maintenance, said amount shall be paid into the Federal highway fund for reapportionment among all the States for the construction of roads under this Act, and the Secretary of Agriculture shall then approve further projects submitted by the State as in this Act provided.

Whenever it shall become necessary for the Secretary of Agriculture under the provisions of this Act to place any highway in a proper condition of maintenance the Secretary of Agriculture shall contract with some responsible party or parties for doing such work: *Provided, however,* That in case he is not able to secure a satisfactory contract he may purchase, lease, hire, or otherwise obtain all necessary supplies, equipment, and labor, and may operate and maintain such

motor and other equipment and facilities as in his judgment are necessary for the proper and efficient performance of his functions.

SEC. 15. That within two years after this Act takes effect the Secretary of Agriculture shall prepare, publish, and distribute a map showing the highways and forest roads that have been selected and approved as a part of the primary or interstate, and the secondary or intercounty systems, and at least annually thereafter shall publish supplementary maps showing his program and the progress made in selection, construction, and reconstruction.

SEC. 16. That for the purpose of this Act the consent United States is hereby given to any railroad or canal company to convey to the highway department of any State any part of its right of way or other property in that State acquired by grant from the United States.

SEC. 17. That if the Secretary of Agriculture determines that any part of the public lands or reservations of the United States is reasonably necessary for the right of way of any highway or forest road or as a source of materials for the construction or maintenance of any such highway or forest road adjacent to such lands or reservations, the Secretary of Agriculture shall file with the Secretary of the department supervising the administration of such land or reservation a map showing the portion of such lands or reservations which it is desired to appropriate.

If within a period of four months after such filing the said Secretary shall not have certified to the Secretary of Agriculture that the proposed appropriation of such land or material is contrary to the public interest

or inconsistent with the purposes for which such land or materials have been reserved, or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land and materials may be appropriated and transferred to the State highway department for such purposes and subject to the conditions so specified.

If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State highway department to the Secretary of Agriculture, and such lands or materials shall immediately revert to the control of the Secretary of the department from which they had been appropriated.

SEC. 18. That the Secretary of Agriculture shall prescribe and promulgate all needful rules and regulations for the carrying out of the provisions of this Act, including such recommendations to the Congress and the State highway departments as he may deem necessary for preserving and protecting the highways and insuring the safety of traffic thereon.

SEC. 19. That on or before the first Monday in December of each year the Secretary of Agriculture shall make a report to Congress, which shall include a detailed statement of the work done, the status of each project undertaken, the allocation of appropriations, an itemized statement of the expenditures and receipts during the preceding fiscal year under this Act, an itemized statement of the traveling and other expenses, including a list of employees, their duties, salaries, and traveling expenses, if any, and his recommendations, if any, for

new legislation amending or supplementing this Act. The Secretary of Agriculture shall also make such special reports as Congress may request.

SEC. 20. That for the purpose of carrying out the provisions of this Act there is hereby appropriated, out of the moneys in the Treasury not otherwise appropriated, $75,000,000 for the fiscal year ending June 30, 1922, $25,000,000 of which shall become immediately available, and $50,000,000 of which shall become available January 1, 1922.

SEC. 21. That so much, not to exceed 2½ per centum, of all moneys hereby or hereafter appropriated for expenditure under the provisions of this Act, as the Secretary of Agriculture may deem necessary for administering the provisions of this Act and for carrying on necessary highway research and investigational studies independently or in cooperation with the State highway departments and other research agencies, and for publishing the results thereof, shall be deducted for such purposes, available until expended.

Within sixty days after the close of each fiscal year the Secretary of Agriculture shall determine what part, if any, of the sums theretofore deducted for such purposes will not be needed and apportion such part, if any, for the fiscal year then current in the same manner and on the same basis as are other amounts authorized by this Act apportioned among all the States, and shall certify such apportionment to the Secretary of the Treasury and to the State highway departments.

The Secretary of Agriculture, after making the deduction authorized by this section,

shall apportion the remainder of the appropriation made for expenditure under the provision of the Act for the fiscal year among the several States in the following manner: One-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the population of each State bears to the total population of all the States, as shown by the latest available Federal census; one-third in the ratio which the mileage of rural delivery routes and star routes in each State bears to the total mileage of rural delivery and star routes in all the States at the close of the next preceding fiscal year, as shown by certificate of the Postmaster General, which he is directed to make and furnish annually to the Secretary of Agriculture: *Provided*, That no State shall receive less than one-half of 1 per centum of each year's allotment. All moneys herein or hereafter appropriated for expenditure under the provisions of this Act shall be available until the close of the second succeeding fiscal year for which apportionment was made: *Provided further*, That any sums apportioned to any State under the provisions of the Act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916, and all Acts amendatory thereof and supplemental thereto, shall be available for expenditure in that State for the purpose set forth in such Acts until two years after the close of the respective fiscal years for which any such sums become available, and any amount so apportioned remaining unexpended at the end of the period during which it is available for expenditure under the terms of such Acts shall

be reapportioned according to the provisions of the Act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916: *And provided further,* That any amount apportioned under the provisions of this Act unexpended at the end of the period during which it is available for expenditure under the terms of this section shall be reapportioned within sixty days thereafter to all the States in the same manner and on the same basis, and certified to the Secretary of the Treasury and the State highway departments in the same way as if it were being apportioned under this Act for the first time.

SEC. 22. That within sixty days after the approval of this Act the Secretary of Agriculture shall certify to the Secretary of the Treasury and to each of the State highway departments the sum he has estimated to be deducted for administering the provisions of this Act and the sums which he has apportioned to each State for the fiscal year ending June 30, 1922, and on or before January 20 next preceding the commencement of each succeeding fiscal year, and shall make like certificates for each fiscal year.

SEC. 23. That out of the moneys in the Treasury not otherwise appropriated, there is hereby appropriated for the survey, construction, reconstruction, and maintenance of forest roads and trails, the sum of $5,000,000 for the fiscal year ending June 30, 1922, available immediately and until expended, and $10,000,000 for the fiscal year ending June 30, 1923, available until expended.

(a) Fifty per centum, but not to exceed $3,000,000 for any one fiscal year, of the ap-

propriation made or that may hereafter be made for expenditure under the provisions of this section shall be expended under the direct supervision of the Secretary of Agriculture in the survey, construction, reconstruction, and maintenance of roads and trails of primary importance for the protection, administration, and utilization of the national forests, or when necessary, for the use and development of the resources upon which communities within or adjacent to the national forests are dependent, and shall be apportioned among the several States, Alaska, and Porto Rico by the Secretary of Agriculture, according to the relative needs of the various national forests, taking into consideration the existing transportation facilities, value of timber, or other resources served, relative fire danger, and compafative difficulties of road and trail construction.

The balance of such appropriations shall be expended by the Secretary of Agriculture in the survey, construction, reconstruction, and maintenance of forest roads of primary importance to the State, counties, or communities within, adjoining, or adjacent to the national forests, and shall be prorated and apportioned by the Secretary of Agriculture for expenditures in the several States, Alaska, and Porto Rico, according to the area and value of the land owned by the Government within the national forests therein as determined by the Secretary of Agriculture from such information, investigation, sources, and departments as the Secretary of Agriculture may deem most accurate.

(b) Cooperation of Territories, States, and civil subdivisions thereof may be ac-

cepted but shall not be required by the Secretary of Agriculture.

(c) The Secretary of Agriculture may enter into contracts with any Territory, State, or civil subdivision thereof for the construction, reconstruction, or maintenance of any forest road or trail or part thereof.

(d) Construction work on forest roads or trails estimated to cost $5,000 or more per mile, exclusive of bridges, shall be advertised and let to contract.

If such estimated cost is less than $5,000 per mile, or if, after proper advertising, no acceptable bid is received, or the bids are deemed excessive, the work may be done by the Secretary of Agriculture on his own account; and for such purpose the Secretary of Agriculture may purchase, lease, hire, rent, or otherwise obtain all necessary supplies, materials, tools, equipment, and facilities required to perform the work.

The appropriation made in this section or that may hereafter be made for expenditure under the provisions of this section may be expended for the purpose herein authorized and for the payment of wages, salaries, and other expenses for help employed in connection with such work.

SEC. 24. That in any State where the existing constitution or laws will not permit the State to provide revenues for the construction, reconstruction, or maintenance of highways, the Secretary of Agriculture shall continue to approve projects for said State until three years after the passage of this Act, if he shall find that said State has complied with the provisions of this Act in so far as its existing constitution and laws will permit.

SEC. 25. That if any provision of this Act, or the application thereof to any person or circumstances, shall be held invalid, the validity of the remainder of the Act and of the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 26. That all Acts or parts of Acts in any way inconsistent with the provisions of this Act are hereby repealed, and this Act shall take effect on its passage.

Approved, November 9, 1921.

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